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No. -

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

BRIAN P. BLINN,

Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,

Appellee.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

JURISDICTIONAL STATEMENT

ROBERT L. HOLLOWAY, JR.*
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April 22, 1987

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Whether the appellant's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States have been violated by his conviction pursuant to Massachusetts General Laws Chapter 140, Section 27, which statute, as construed by the Massachusetts Supreme Judicial Court, provides that the police may inspect a hotel guest register at any time and for any reason without an administrative or criminal search warrant, and that any person refusing to allow access to such guest register shall be punished by a fine or imprisonment, or both.

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BRIAN P. BLINN,

Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,

Appellee.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

JURISDICTIONAL STATEMENT

Brian P. Blinn, the appellant, appeals from the final judgment of the Supreme Judicial Court of the Commonwealth of Massachusetts, dated January 22, 1987, affirming the appellant's conviction pursuant to Massachusetts General Laws Chapter 140, Section 27, for failing to allow the warrantless inspection by police of the guest register of a Howard Johnson's Motor Lodge. The appellant's conviction was affirmed despite his claim that the statute, which allows warrantless searches of guest registers by police, violated his right to be free from unreasonable searches and seizures as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

OPINIONS BELOW

The opinion of the Supreme Judicial Court of Massachusetts, which appears in the appendix hereto, pp. 1a-6a, is reported at 399 Mass. 126, 503 N.E.2d 25 (1987).

JURISDICTION

This appeal is taken from a final judgment of the Massachusetts Supreme Judicial Court dated January 22, 1987, holding that the appellant's conviction for failing to allow a warrantless inspection of a motor lodge guest register pursuant to Massachusetts General Laws Chapter 140, Section 27, did not violate his right under the Fourth and Fourteenth Amendments to be free from unreasonable searches and seizures.

A notice of appeal to this Court, dated March 20, 1987, was timely filed with the Massachusetts Supreme Judicial Court, on March 23, 1987. This appeal is being docketed in this Court within ninety (90) days from the Supreme Judicial Court's January 22, 1987 decision. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES

UNITED STATES CONSTITUTION.

Amendment 4:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

. . . . . .

Amendment 14, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Massachusetts General Laws c. 140, § 27, is set forth in full in the Appendix, at 10a, as is Chapter 140, § 26, at 14a.

STATEMENT OF THE CASE

I. Nature of the Case.

On September 21, 1984, the appellant, Brian P. Blinn, was working as manager of the Howard Johnson's Motor Lodge located on Route 114 in Danvers, Massachusetts. On that date, Massachusetts State Police Trooper Robert Smith arrived at the motor lodge and asked the desk clerk to produce the motor lodge's register of guests. The desk clerk told the appellant

that Trooper Smith wanted to see the guest register, whereupon the appellant asked Trooper Smith to produce a search warrant.

Trooper Smith advised the appellant that Massachusetts law gave him the right to inspect the guest register, and told the appellant that he would be criminally prosecuted for not allowing the trooper to view the guest register. The trooper then went to his cruiser, where he kept a copy of G.L. c. 140, § 27, and returned to speak with the appellant.

Trooper Smith requested that he and the appellant speak in private. In the appellant's office, Trooper Smith offered the appellant a copy of G.L. c. 140, § 27, but the appellant declined to let the trooper view the register. Again, Trooper Smith told the appellant that he would be criminally prosecuted. Trooper Smith wanted to see the guest register in connection with a homicide investigation; however, the appellant was never informed of this fact.

Approximately an hour to an hour and one half after returning to barracks, Trooper Smith returned to the appellant's place of business with two other troopers. The appellant then showed the troopers the guest register, explaining as the reason for his change of mind, when asked, that he was afraid that he would be arrested and locked up for the weekend. At no time did Trooper Smith make an effort to obtain a search warrant requiring the appellant to produce the guest register for inspection. Although Trooper Smith testified at trial that the investigation was being conducted in connection with a homicide, there was no suggestion that there were any exigent circumstances attendant to this investigation.

II. The Prior Proceedings.

On September 27, 1984, a criminal complaint issued against the appellant, for failing to allow Trooper Smith to view the

guest register pursuant to G.L. c. 140, § 27. The appellant made a motion to dismiss the complaint in the Trial Court of the Commonwealth of Massachusetts, Salem District Court, on the grounds that G.L. c. 140, § 27, to the extent that the statute requires production of a guest register without a warrant, is unconstitutional. The motion was denied on March 1, 1985. This motion was renewed and again denied on June 14, 1985.

The appellant was tried before a Jury of Six in the Salem District Court on September 13, 1985. A Motion for a Required Finding of Not Guilty, raising the constitutionality of G.L. c. 140, § 27, was denied. The appellant was convicted on September 13, 1985, and timely appealed this conviction on September 18, 1985, to the Massachusetts Court of Appeals.

On February 25, 1986, the appellant filed a Petition for Direct Appellate Review with the Massachusetts Supreme Judicial Court, which petition was allowed on March 17, 1986. After briefing and oral argument, the Massachusetts Supreme Judicial Court issued *Commonwealth* v. *Blinn*, 399 Mass. 126, 503 N.E.2d 25 (1987), on January 22, 1987.

The Supreme Judicial Court expressly noted, *see* Appendix at 3a, 399 Mass. at 127, and 503 N.E.2d at 26, that the appellant had raised the issue of whether G.L. c. 140, § 27 violates the Fourth Amendment to the United States Constitution in the trial court proceedings, and rendered its decision on the grounds that the statute does not violate the Federal Constitution.

REASONS FOR GRANTING PLENARY REVIEW

I. The Constitutionality of the Massachusetts Statute, Which Gives Police an Unfettered Right to Monitor the Activities of Citizens, Presents Substantial Federal Questions.

The Massachusetts statute, upheld in *Commonwealth* v. *Blinn*, allows the police to demand access to a hotel or motel guest register at any time of the day or night. *See* G.L. c. 140, § 27, *infra* at 10a. The police can make this demand without having any particular reason for conducting the search. No warrant need be obtained, whether the search is conducted in an effort to obtain evidence to be used in a criminal prosecution, or whether the search is administrative in nature, and therefore no neutral and detached magistrate is interposed to ensure that searches are being conducted for legitimate purposes.

The statute, which was enacted in 1918, is largely aimed at promoting the government's interest in morality, *see Maher* v. *Town of Brookline*, 339 Mass. 209, 215, 158 N.E.2d 320, 324 (1959). Legislative history reveals that this statute was enacted as a part of a regulatory scheme designed to monitor the occurrence of immoral conduct in hotels. *See* COMMITTEE ON BILLS IN THE THIRD READING, MASSACHUSETTS HOUSE OF REPRESENTATIVES, at 2 (May 14, 1918) (House Bill No. 1547), at 11a-13a; G.L. c. 140, § 26, at 14a. Although G.L. c. 140, § 27 is administrative or regulatory in nature, the State troopers in this case clearly used the statute as a device to obtain evidence in a criminal matter.

In addition to failing to provide for a suitable warrant procedure pursuant to which the police may inspect a guest register, the statute also fails to specify what time of day or night such requests to inspect may be made, how frequently they may be made, or how often any one hotel or motel may be

singled out for such inspections. The statute also makes no mention of whether, each time the police decide to view a guest register, the police are allowed to inspect all of the records required to be kept for the period of at least one year required by the statute.

In short, G.L. c. 140, § 27, allows police unfettered discretion to inspect guest registers, at any time and with as much frequency as they desire.[1] The statute creates the possibility of the police monitoring the activities of certain singled out individuals or of citizens in general; harassment of certain hotel or motel owners, and the probability that evidence sought to be used in criminal prosecutions will be obtained regularly in warrantless searches conducted under a grant of authority of an administrative, record-keeping statute. Any hotel or motel owner or individual in charge who on any occasion refuses to allow such access risks criminal prosecution as did the appellant in this case.

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[1] Nationwide, there are several other states which appear to require hotel guest registration. *See* ALASKA STAT. § 08.56.010 (1986); ARK. STAT. ANN. §§ 71-1102, 71-1104 (1979); COLO. REV. STAT. §§ 43-5-203, 43-5-204 (1984); FLA. STAT. ANN. § 509.101 (West Supp. 1987); IDAHO CODE § 39-1819A (1985); IND. CODE ANN. § 16-9-1-1 (Burns 1983); MINN. STAT. ANN. § 327.10 (West Supp. 1986); N.C. GEN. STAT. § 72-30 (1985); N.D. CENT. CODE § 23-09-20.1 (1978); N.H. REV. STAT. ANN. § 353:3 (1984); N.Y. GEN. BUS. LAW § 204 (McKinney 1968); VT. STAT. ANN. tit. 71, § 3101 (1984); WASH. REV. CODE ANN. § 19.48.020 (West Supp. 1987). Of these, four explicitly provide for unfettered police inspection of the registration records. *See* ARK. STAT. ANN. §§ 71-1102, 71-1104 (1979); COLO. REV. STAT. §§ 43-5-203, 43-5-204 (1984); IND. CODE ANN. § 16-9-1-1 (Burns 1983); N.H. REV. STAT. ANN. § 353:3 (1984).

II. The Massachusetts Supreme Judicial Court Failed to Follow this Court's Decisions Regarding the Search of Business Premises, in Upholding the Massachusetts Statute.

In its decision in *Commonwealth* v. *Blinn*, the Massachusetts Supreme Judicial Court failed to follow this Court's longstanding rulings concerning the right of owners of businesses to Fourth Amendment protection against unlawful searches and seizures. In *See* v. *City of Seattle*, 387 U.S. 541, 545-46 (1967), the Court held that administrative entry, without consent, upon the portions of business premises not open to the public may only be compelled through a suitable warrant procedure. In a companion case, *Camara* v. *Municipal Court*, 387 U.S. 523, 530 (1967), involving municipal fire, health, and housing inspections of private residences, this Court disagreed with the holding of *Frank* v. *Maryland*, 359 U.S. 360, 365, 367 (1959), wherein the Court held that such inspections "touch at most upon the 'periphery' of the important interests safeguarded by the Fourth Amendment's protection against official intrusions," in that the inspector does not seek "evidence of criminal action" to be used to secure the owner's conviction.

In *Camara*, the Court noted that Fourth Amendment interests are not "peripheral" where refusal of the resident to permit an inspection is itself a crime, punishable by fine or even by jail sentence. 387 U.S. at 531. Similarly, the appellant's Fourth Amendment interests are great, where he is forced to face arrest and prosecution in an effort to protect his Fourth Amendment rights and the privacy rights of his guests. *See also Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 62 (1976) (quoting *Doe* v. *Bolton*, 410 U.S. 179, 188 (1973)) (physician-appellants had standing to assert privacy rights of patients where physicians were subject to crim-

inal prosecution under the challenged statute). The Massachusetts Supreme Judicial Court erred, therefore, in holding that a proper factor in the Court's decision was that the appellant was not the target of a criminal investigation. Appendix at 5a, 399 Mass. at 129, 503 N.E.2d at 27.

The Supreme Judicial Court further failed to adequately address the appellant's argument that the trooper was conducting an unconstitutional criminal investigation under the guise of an administrative search. Appendix at 6a, 399 Mass. at 130, 503 N.E.2d at 28. In *Michigan* v. *Clifford*, 464 U.S. 287, 294-95 (1984) (plurality opinion), this Court held that a search to gather evidence of criminal activity not in plain view must be made pursuant to a criminal warrant upon a traditional showing of probable cause.

Even if the search of the appellant's guest register, done for the purpose of obtaining evidence of criminal activity, can be deemed to have been an administrative search, the requirement set forth in *See*, that an administrative warrant would have to be obtained, would still apply to this case. Since the *See* and *Camara* decisions, this Court has identified certain situations where a warrantless administrative search may be conducted. Generally, these cases involve situations where pervasively regulated industries are subject to a statutorily authorized procedure, that is carefully limited as to time, place and scope.

In *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72, 74-77 (1970), the Court held that a statutory fine for refusal to allow inspection of an establishment involved in the retail sale of liquors to the public was a valid sanction in a closely regulated industry, which sanction excluded any right by the inspector to break and enter without a warrant. The Court held that "[w]here Congress has authorized inspection but made no rules governing the procedure that inspectors must follow, the Fourth Amendment and its various restrictive rules apply." *Id.* at 77.

In *United States* v. *Biswell*, 406 U.S. 311, 315-16 (1972), a warrantless inspection of a firearms dealer's premises was upheld, as the regulatory inspection scheme was carefully limited in time, place and scope, and warrantless inspections of this pervasively regulated business were a crucial part of the regulatory scheme. *See also Donovan* v. *Dewey*, 452 U.S. 594, 602-05 (1981) (warrantless inspections of mines upheld, as mining industry among the most hazardous in the country, statutory scheme prohibited forcible entries, and discretion of government officials directly curtailed by comprehensive regulatory scheme).

However, in *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 313-14 (1978), the Secretary of Labor's argument that the Occupational Safety and Health Act required warrantless inspections of business premises was rejected, in that such a ruling would fail to recognize that closely regulated industries such as those involved in *Colonnade* and *Biswell* are the exception rather than the rule. In addition, the authority to make warrantless searches would give executive and administrative officers, particularly those in the field, almost unbridled discretion as to when to search and whom to search. *Id.* at 323.

Massachusetts General Laws c. 140, § 27, provides the police with unbridled discretion as to which establishments they care to investigate; how frequently such investigations are to occur; at what time of the day or night investigations will take place, and how extensive any given investigation will be. The Supreme Judicial Court, in addressing this issue, held that an applicable Massachusetts decision involved standards "based on statutory principles which have no application here." Appendix at 5a-6a, 399 Mass. at 129-30, 503 N.E.2d at 28. The appellant maintained below, and continues to maintain, that the above principles do indeed pertain to this case.

III. The Massachusetts Supreme Judicial Court Misconstrued this Court's Recent Decision in *Dow Chemical Co.* v. *United States*, 476 U.S. ___, 90 L. Ed. 2d 226, 106 S. Ct. 1819 (1986), in that the Massachusetts Court Relied Upon *Dow Chemical* as Authority for its Decision that the Appellant had no Reasonable Expectation of Privacy in His Motor Lodge's Guest Register.

In *Commonwealth* v. *Blinn*, the Massachusetts Supreme Judicial Court did not have to engage in an analysis of this Court's decisions concerning warrantless searches conducted for the purpose of obtaining evidence of criminal activity, or warrantless administrative searches, in that the Court ruled that the appellant had no legitimate expectation of privacy in the guest register of his motor lodge. Appendix at 3a-6a, 399 Mass. at 127-30, 503 N.E.2d at 26-28. The Court cited *Dow Chemical Co.* v. *United States*, 476 U.S. ___, ___, 90 L. Ed. 2d 226, 237, 106 S. Ct. 1819, 1826 (1986), and *Donovan* v. *Dewey*, 452 U.S. 594, 599 (1981), for the proposition that the government has greater latitude to conduct warrantless inspections of commercial property because the expectation of privacy that the owner enjoys in such property differs significantly from the sanctity accorded an individual's home.

However, as has been stated above, *Donovan* v. *Dewey* involved inspections of mines, pursuant to a comprehensive regulatory scheme prohibiting forcible entries. 452 U.S. at 602-05. The *Dow* case is also inapposite. In *Dow*, the Court stated that "Dow plainly has a reasonable, legitimate, and objective expectation of privacy within the interior of its covered buildings, and it is equally clear that expectation is one society is prepared to observe." 476 U.S. at ___, 90 L. Ed. 2d at 236, 106 S. Ct. at 1825 (citing *See* v. *City of Seattle*).

The Court in *Dow* faced the narrow issue of whether aerial observation of a 2,000-acre outdoor manufacturing facility

without physical entry involved a search and seizure in violation of the Fourth Amendment. *Id.* at ___, 90 L. Ed. 2d at 237, 106 S. Ct. at 1826. The Court held that the taking of aerial photographs of the open areas of an industrial complex from navigable airspace, such complex being more comparable to an "open field" than to the "curtilage" of a dwelling, is not a search prohibited by the Fourth Amendment. *Id.* at ___, 90 L. Ed. 2d at 238, 106 S. Ct. at 1827. *See also California* v. *Ciraolo*, 476 U.S. ___, ___, 90 L. Ed. 2d 210, 217-18, 106 S. Ct. 1809, 1813 (1986) (respondent's expectation that observations of marijuana plants within curtilage of his home, made from navigable airspace at altitude of 1,000 feet, in a physically noninstrusive manner, was an unreasonable expectation in that marijuana plants were readily discernable to the naked eye).

The *Dow* and *Ciraolo* cases have no application to this case. The appellant's guest register was inside the appellant's business premises, behind a counter, and not subject to plain view observation. The appellant had an expectation of privacy in these records. This is precisely why the tooper had to demand to see the register, and why he had to use intimidation, by repeatedly threatening prosecution and returning one and one-half hours later with two other troopers, to convince the appellant that his best interests would be served by allowing the troopers to view the register.

The appellant asserts that the protections afforded by the Fourth Amendment should serve to shield citizens from this kind of heavy-handed, intrusive police conduct, and that the *Dow* and *Ciraolo* cases provide no authority for such actions.

CONCLUSION

For the foregoing reasons, the appellant requests that this Court note probable jurisdiction and set the case for plenary consideration.

Respectfully submitted,

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April 22, 1987

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COMMONWEALTH OF MASSACHUSETTS.

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH,

AT BOSTON, January 22, 1987

IN THE CASE NO. SJC-4175

COMMONWEALTH

vs.

BRIAN P. BLINN

pending in the District Court Department of the Trial Court for the County of Essex, First Division No. 81765

ORDERED, that the following entry be made in the docket; viz., —

Judgment affirmed.

BY THE COURT,

s/s Jean M. Kennett, CLERK.

January 22, 1987

See opinion in file.

COMMONWEALTH *vs.* BRIAN P. BLINN.

Essex. November 5, 1986. — January 22, 1987.

Present: WILKINS, LIACOS, NOLAN, LYNCH, & O'CONNOR, JJ.

Search and Seizure, Expectation of privacy, Administrative inspection. *Constitutional Law*, Search and seizure. *Innkeeper*.

The manager of a motel who was approached by a State trooper seeking to inspect the motel's guest register pursuant to G. L. c. 140, § 27, had no legitimate expectation of privacy in the register in the circumstances of this case, so that the trooper's request that the manager produce the register for inspection did not require a search warrant under the Fourth Amendment to the United States Constitution. [ ]

COMPLAINT received and sworn to in the Salem Division of the District Court Department on September 27, 1984.

In the jury session of that division, the case was tried before *Joseph A. Furnari*, J.

The Supreme Judicial Court granted a request for direct appellate review.

John S. Legasey (*Michael J. McLane* with him) for the defendant.

Robert J. Bender, Assistant District Attorney, for the Commonwealth.

NOLAN, J. The defendant, Brian P. Blinn, appeals from a judgment of conviction by a jury of six in the Salem Division of the District Court. The defendant was found guilty of violating G. L. c. 140, § 27 (1984 ed.),[1] for refusing to produce

[1] General Laws c. 140, § 27 (1984 ed.), in pertinent part, provides: "Every innholder . . . shall keep or cause to be kept, in permanent form, a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room . . . . Such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry therein, and shall be open to the inspection of the licensing authorities, their agents and the police. Whoever

a motel register when requested to do so by a State trooper. The defendant now argues that G. L. c. 140, § 27 (1984 ed.), violates the Fourth Amendment of the United States Constitution and art. 14 of the Declaration of Rights of the Massachusetts Constitution.[2] We allowed the defendant's petition for direct appellate review. We disagree and affirm the conviction.

The facts are not in dispute. On September 21, 1984, Massachusetts State Trooper Robert Smith went to the Howard Johnson Motor Lodge in Danvers. Trooper Smith asked the defendant, the manager of the motel, to produce the motel's guest register for inspection. The defendant refused to allow Trooper Smith to see the register unless Trooper Smith obtained a search warrant. Trooper Smith left the motel and returned with a copy of G. L. c. 140, § 27, and again demanded to see the register. Even though the statute required the defendant to show the register to the police, the defendant refused to do so because the State trooper did not have a search warrant. The trooper again left the motel and returned with two other troopers about an hour and a half later. At this time, the defendant produced the register, but he was subsequently charged with violating G. L. c. 140, § 27, for failing to produce the register for inspection when first requested to do so. At no time did Trooper Smith obtain a search warrant requiring the defendant to produce the guest register for inspection.

Our inquiry begins by examining whether the conduct of the trooper constituted a search in the Fourth Amendment sense. The Fourth Amendment does not prohibit all searches per se, but it does bar police intrusions into areas where a defendant has a "legitimate expectation of privacy in the particular circumstances." *Commonwealth* v. *Podgurski*, 386 Mass. 385, 387 (1982), cert. denied, 459 U.S. 1222 (1983), quoting *Sul-*

violates any provision of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than three months, or both."

[2] The defendant did not make his State constitutional claim at trial and it cannot be raised for the first time on appeal. *Commonwealth* v. *Cote*, 386 Mass. 354, 358 n.6 (1982).

livan v. *District Court of Hampshire*, 384 Mass. 736, 741-742 (1981). Thus, if the defendant had no legitimate expectation of privacy in the motel register, the trooper's request pursuant to G. L. c. 140, § 27, does not require a search warrant under the Fourth Amendment.

The United States Supreme Court has held that the government "has 'greater latitude to conduct warrantless inspections of commercial property' because 'the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home.'" *Dow Chemical Co.* v. *United States*, 106 S. Ct. 1819, 1826 (1986), quoting *Donovan v. Dewey*, 452 U.S. 594, 599 (1981). The Court has emphasized that, unlike a homeowner's interest in his dwelling, "[t]he interest of the owner of commercial property is not one in being free from any inspections." *Id.* The test in determining whether a particular defendant has a reasonable expectation of privacy is essentially an objective one: whether the expectation is one that society is prepared to recognize as reasonable. *Michigan* v. *Clifford*, 464 U.S. 287, 292 (1984).

Based on the facts presented at the defendant's trial, we conclude that the defendant had no reasonable expectation of privacy in the motel's guest register. In reaching this conclusion, we rely on several factors. First, as noted above, in business premises a person enjoys less of an expectation of privacy than in a home. Second, the guest register at issue was required to be kept by statute, thereby placing the defendant on notice that the register was subject to police inspection. The fact that a statute gives advance notice of warrantless inspections, though not determinative, is a factor to be considered in determining whether a defendant's expectation of privacy is legitimate. *United States* v. *Biswell*, 406 U.S. 311, 316 (1972). 3 W. LaFave, Search and Seizure § 10.2(c), 221 (1978). Third, all motel guests are presumed to be aware that the defendant was required by law to keep an accurate register because the laws regarding the register are required to be posted. G. L. c. 140, § 31 (1984 ed.). Thus, the defendant's argument that he could withhold the register in order to protect

the privacy of his guests must fail because the guests had no legitimate expectation that their names in the register could be withheld from the police.

Finally, it is important to note that the defendant was not the target of a criminal investigation by the State police. Had the police sought the register for the purpose of obtaining evidence against the defendant in a criminal proceeding, the defendant arguably may have had an expectation of privacy in the register. However, where, as here, the police are seeking the register to ascertain whether a criminal suspect is registered at the hotel, the hotel manager's expectation of privacy in the register is significantly diminished, if it exists at all. The record indicates that the defendant did not know that he was not a criminal suspect, but this fact alone is not sufficient to warrant reversal. The fact that the defendant was not the target of a criminal investigation, when combined with the other three factors discussed above, indicates that the defendant had no legitimate expectation of privacy in the motel register in the circumstances of this case. Accord, *King* v. *Tulsa,* 415 P.2d 606, 610-612 (Okla. Crim. App. 1966) (upholding a hotel guest register inspection ordinance which was challenged as an unconstitutional search and seizure; an inspection pursuant to the ordinance is not unreasonable when the police request is limited to a specific period of time); *Allinder* v. *Homewood,* 254 Ala. 525, 531-533 (1950) (statute requiring guest register to be open for police inspection for two years after the date of the last register entry does not violate innkeeper's constitutional right to be free from "obnoxious force and seizure").

The defendant argues that the State trooper's request to view the register is an administrative search which must meet the standards we set out in *Commonwealth* v. *Lipomi,* 385 Mass. 370, 380 (1982) (statute regulating pharmacies). Under *Lipomi*, a warrant is required unless the enterprise is pervasively regulated, a warrantless inspection is crucial to furthering an urgent governmental interest, and the scope of inspection is limited in time, place, and manner. See also *Dunlop* v. *Hertzler Enters., Inc.,* 418 F. Supp. 627, 631-632 (D.N.M. 1976). The short answer to that argument, however, is that the *Lipomi*

standards were based on statutory principles which have no application here. The defendant also argues that he should not have had to produce the register because the trooper was conducting a criminal investigation under the guise of an administrative search. See *Commonwealth* v. *Frodyma,* 386 Mass. 434, 437-438 (1982), *S.C.*, 393 Mass. 438 (1984). The instant case, however, is readily distinguishable from *Frodyma* because here the State trooper was not seeking evidence to be used against the defendant and because *Frodyma,* like *Lipomi,* was decided under statutory standards. Finally, the defendant contends that the Commonwealth must show exigent circumstances in order for the inspection of the motel register to be valid, but this argument must also fail because neither a warrant nor exigent circumstances are required for inspection of items in which a defendant has no reasonable expectation of privacy.

Judgment affirmed.

IN THE SUPREME JUDICIAL COURT

OF THE COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS, *Appellee*	)	
v.	)	No. 4175
BRIAN P. BLINN, *Appellant*	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Brian P. Blinn, the above-named appellant, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Judicial Court of the Commonwealth of Massachusetts, affirming the judgment of conviction, entered herein on January 22, 1987.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

s/s John S. Legasey
Michael J. McLane
ARDIFF & MORSE
10 Elm Street
Danvers, Massachusetts 01923
(617) 774-7123

Dated: March 20, 1987

CERTIFICATE OF SERVICE

I, John S. Legasey, attorney for the appellant herein, Brian P. Blinn, hereby certify that I have this day served a copy of the within *Notice of Appeal to the Supreme Court of the United States* upon all parties required to be served, by mailing a copy of same, first class postage prepaid, to the following:

Robert J. Bender, Esq.
Assistant District Attorney
Office of Kevin M. Burke
District Attorney for The Eastern District
70 Washington Street
Salem, Massachusetts 01970
(617) 745-6610

Dated: March 20, 1987

s/s John S. Legasey

IN THE SUPREME JUDICIAL COURT

OF THE COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS, Appellee	)	
v.	)	No. 4175
BRIAN P. BLINN, Appellant	)	

AMENDED CERTIFICATE OF SERVICE

I, Robert L. Holloway, Jr., attorney for the defendant herein, hereby certify that a copy of the defendant's *Notice of Appeal to the Supreme Court of the United States* was served, by mailing a copy of same, postage prepaid, on March 20, 1987, to the following:

Robert J. Bender, Esq.
Assistant District Attorney
Office of Kevin M. Burke
District Attorney for the Eastern Division
70 Washington Street
Salem, Massachusetts 01970

and that a copy of same was mailed, postage prepaid, on April 17, 1987, to the following:

James M. Shannon, Esq.
Attorney General of the
Commonwealth of Massachusetts
One Ashburton Place
Boston, Massachusetts 02108

s/s _____
Robert L. Holloway, Jr.
ARDIFF & MORSE, P.C.
Ten Elm Street
Danvers, Massachusetts
01923
Tel. (617) 774-7123

Dated: April 17, 1987.

Massachusetts General Laws.

Chapter 140.

§ 27. Register; Penalty.

Every innholder, and every lodging house keeper required so to do under section twenty-eight, and every person who shall conduct, control, manage or operate, directly or indirectly, any recreational camp, overnight camp or cabin, motel or mobile home park shall keep or cause to be kept, in permanent form, a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room averaging less than four hundred square feet floor area, excepting a private dining room not containing a bed or couch, or opening into a room containing a bed or couch, for any period of the day or night in any part of the premises controlled by the licensee, together with a true and accurate record of the room assigned to such person and of the day and hour when such room is assigned. The entry of the names of the person engaging a room and of the occupants of said room shall be made by said person engaging said room or by an occupant thereof, except that when five or more members of a business, fraternal, or social group or other group having a common interest are engaging rooms, they may designate one person to make said entry on their behalf and prior to occupancy. Until the entry of such name and the record of the room has been made, such person shall not be allowed to occupy privately any room upon the licensed premises. Such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry therein, and shall be open to the inspection of the licensing authorities, their agents and the police. Whoever violates any provision of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than three months, or both.

Committee on Bills.

HOUSE . . . . No. 1547

The Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, MAY 14, 1918.

The committee on Bills in the Third Reading, to whom was recommitted the bill to provide for the licensing, inspection and regulation of hotels and private lodging houses (Senate, No. 347, amended), report recommending that the same be amended as follows: —

By striking out section one, and substituting the following: — *Section 1*. No person shall conduct a "lodging house", except as hereinafter provided, unless such person has secured a license issued under the provisions of this act. The term "lodging house" shall not be deemed to include a house where lodgings are let to less than five lodgers, nor to the dormitories of charitable, educational or philanthropic institutions. The term "lodger" shall not be deemed to include persons within the second degree of kindred to the person conducting a lodging house.

By striking out section two, and substituting the following: — *Section 2*. Licenses under this act may be issued by the same persons issuing innkeepers' and common victuallers' licenses, as provided in section two of chapter one hundred and two of the Revised Laws, as amended by chapter three hundred and eighty-three of the acts of nineteen hundred and ten, and shall be for the same period provided in section four of chapter one hundred and two of the Revised Laws. All inn-

keepers' licenses issued after the passage of this act shall be expressed to be subject to the provisions of this act. No license fee shall be collected for a lodging house license.

By striking out section 3.

In section 5, by striking out all after the word "conduct", in line 6, and substituting the following: — Evidence that a room in a hotel or lodging house was not actually used for immoral conduct shall not prevent a conviction under this section of a person in actual charge, control or management of the premises who permits the occupation of such a room knowing or having good reason to know that the parties occupying such a room intended to use it for immoral solicitation, immoral bargaining or immoral conduct. Where it is required that registers be kept, as hereinafter provided in this act, evidence that the person in actual charge, control or management of the premises has knowingly permitted the occupation of a private room of less than four hundred square feet floor area containing a bed or couch by the same woman on different occasions within a period of thirty days with different men, or by the same man on different occasions within a period of thirty days with different women, shall be prima facie evidence of a violation of this section.

By striking out section 6, and substituting the following: — *Section 6*. Every innkeeper, and lodging house keeper required so to do under this act, shall keep or cause to be kept, in permanent form, a register in which shall be recorded the true name or name in ordinary use and the residence of every person engaging or occupying a private room or rooms averaging less than four hundred square feet floor area per room for any period of the day or night in any part of the premises controlled by the licensee, together with a true and accurate record of the room or rooms assigned to such person or persons and of the day and hour when such room is assigned. The entry of the names of the person engaging a room or rooms and of the occupants of said room or rooms shall be made by said person

engaging or by an occupant of said room or rooms. Until the entry of such name or names and the record of the room or rooms has been made, such person or persons shall not be allowed to occupy privately any room or rooms upon the licensed premises. Such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry therein and shall be open to the inspection of the licensing authorities, their agents and the police.

By inserting a new section after section 7 as follows: — *Section 7.* No person conducting a lodging house shall be required to keep a register, as provided in section five, until such person has received an order to keep such register from the licensing authority defined in section two. Said licensing authority on its own initiative may issue such order and shall issue such order upon a written affidavit signed by a commissioned officer in the United States Army or Navy, or a police officer, stating that the affiant knows or believes such lodging house is being used for immoral solicitation, immoral bargaining or immoral conduct, and upon the receipt of such affidavit, the licensing board shall issue an order that the person conducting such lodging house keep a register and within one day thereafter said person shall keep a register and be subject to this act.

In Section 9, by inserting after the word "license", in line 4, the following: — It shall also have the right to suspend and make inoperative for such period of time as it may deem proper in all the aforesaid licenses mentioned herein for any cause deemed satisfactory to it, — and by inserting after the word "revocation", in lines 4 and 5, the words: — and suspension.

In Section 12, by striking out in line 2, the word "July", and substituting the word: — August.

So that when the same is amended it will be correctly drawn.

For the committee,

LELAND POWERS.

Massachusetts General Laws.

Chapter 140.

§ 26. Penalty for Permitting Immoral Conduct; Evidence, Effect.

Whoever, being licensed as a lodging house keeper under sections twenty-two to thirty-one, inclusive, or as an innholder, or, being licensed under sections thirty-two A to thirty-two E, inclusive, or being in actual charge, management or control of such lodging house, inn or premises for which the license is issued, knowingly permits the property under his control to be used for the purpose of immoral solicitation, immoral bargaining or immoral conduct shall be punished by a fine of not less than five hundred nor more than one thousand dollars or by imprisonment for not less than six months nor more than one year, or both. Evidence that a room in a hotel or lodging house or that the premises licensed under sections thirty-two A to thirty-two E, inclusive, were not actually used for immoral conduct shall not prevent a conviction under this section of a person in actual charge, control or management of the hotel, lodging house or premises who permits the occupation of such a room or such premises knowing or having good reason to know that the person occupying such room or premises intends to use either for immoral solicitation, immoral bargaining or immoral conduct. If it is required that registers be kept, as provided in sections twenty-seven and twenty-eight, evidence that the person in actual charge, control or management of the hotel, lodging house or premises has knowingly permitted the occupation of a private room of less than four hundred square feet floor area or of premises, containing a bed or couch, by the same woman on different occasions within a period of thirty days with different men, or by the same man on different occasions within a period of thirty days with different women, shall be prima facie evidence of a violation of this section.

Other State Statutes.

Alaska.

Sec. 08.56.010. Registration of travelers. The proprietors of roadhouses, hotels, or boardinghouses located outside of incorporated cities shall each keep a register containing the name and address of each guest with the date of arrival and departure.

Arkansas.

Sec. 71-1102. Registration of guests in tourist camp, hotel or rooming house. — Every person operating a tourist camp, hotel or rooming house shall provide and keep a register in which shall be entered the name and address of every guest to whom accommodations are hired or given. In the event a guest is traveling by automobile[,] license number and State designation shall be registered.

Sec. 71-1104. Enforcement of act. — The Chief Inspector of the Bureau of Sanitation and his deputies, and the State Police are hereby required to assist in the enforcement of this act [§§ 71-1101 — 71-1106] and of any rules and regulations promulgated by the State Board of Health relating to tourist camps, hotels and rooming houses.

Colorado.

Sec. 43-5-203. Required records. (1) It is the duty of every person, firm, association, or corporation owning, operating, controlling, or leasing an auto camp or hotel to keep and maintain in the auto camp or hotel an easily accessible and permanent daily record of all automobiles stored, kept, parked, or maintained in said auto camp and all automobiles of patrons of such hotel which are parked in facilities maintained or made

available exclusively for such patrons by such hotel. The record shall be kept in a book or on cards, consecutively numbered, in a uniform manner approved by the Colorado state patrol. The record shall include the name and address of the owner of the automobile stored, parked, kept, or maintained in said auto camp or hotel facility, together with the make, body style, and year of said automobile and the license number, if any. All such records shall be preserved for a period of three years.

Sec. 43-5-204. Record open for inspection by officers. The books and records of every auto camp and hotel shall be open for inspection to members of the Colorado state patrol and all peace officers of the state.

Florida.

Sec. 509.101. Establishment rules; maintenance of guest register.

(1) Any operator of a public lodging establishment or a public food service establishment may establish reasonable rules and regulations for the management of the establishment and its guests and employees; and each guest or employee staying, sojourning, eating, or employed in the establishment shall conform to and abide by such rules and regulations so long as he shall remain in or at the establishment. Such rules and regulations shall be deemed to be a special contract between the operator and each guest or employee using the facilities of or at any public lodging establishment or public food service establishment. Such rules and regulations shall control the liabilities, responsibilities, and obligations of all parties. Any rules or regulations established pursuant to this section shall be printed in the English language and posted, together with a copy of ss. 509.111, 509.151, and 509.161, in the office, hall, or lobby or another prominent place of such public lodging establishment or public food service establishment.

(2) It is the duty of each operator of a public lodging establishment to maintain at all times a register, signed by or for guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. This register shall be available for inspection by the division at any time. Operators need not make available registers which are more than 2 years old.

Idaho.

Sec. 39-1819A. Register. — Every hotel shall keep a record of the arrival and departure of its guests in such a manner that the record will be permanent for at least one (1) year from the date of departure.

Indiana.

Sec. 16-9-1-1 [35-5503, 37-401]. Registration required — Right of inspection — Penalty. — (a) Every owner, operator, manager, superintendent, or person in charge of a hotel, furnished apartment house, boarding house, rooming house, tourist home, tourist camp, motel, or like place shall keep a register, entry book, or card filing system containing the names and addresses, including the street number, town or city, and state, of every individual occupying the premises or any part thereof, and the dates and the time when occupied.

(b) The register, entry book, or card filing system shall be kept open for inspection and investigation by the state board of health or any officer thereof, or any law-enforcement officer. It shall be maintained for every calendar year, and may not be discarded or destroyed until the expiration of one [1] year after the calendar year for which it was maintained.

(c) A person who recklessly violates this section commits a class A misdemeanor.

Minnesota.

Sec. 327.10. Lodging establishment operator, duties.

Every person operating within this state a recreational camping area, cabin camp, lodging house, tourist rooms, motel, manufactured home park, or resort furnishing sleeping or overnight stopping accommodations for transient guests, shall provide and keep thereat a suitable guest register for the registration of all guests provided with sleeping accommodations or other overnight stopping accommodations thereat; and every such guest shall be registered therein. Upon the arrival of every such guest, the operator of such camp or resort shall require the guest to enter in such register, or enter for the guest therein, in separate columns provided in such register, the name and home address of the guest and every person, if any, with the guest as a member of the party; and if traveling by motor vehicle, the make of such vehicle, registration number, and other identifying letters or characters appearing on the official number plate carried thereon, including the name of the state issuing such official plate. Such registration shall be kept in an accurate and orderly manner and retained for one year so that the same will be always accessible for inspection by the proper authorities.

North Carolina.

ARTICLE 3.

Immoral Practices of Guests of Hotels and Lodging Houses.

Sec. 72-30. Registration to be in true name; addresses; peace officers.

No person shall write, or cause to be written, or if in charge of a register knowingly permit to be written, in any register in any lodging house or hotel any other or different name or

designation than the true name or names in ordinary use of the person registering or causing himself to be registered therein. Any person occupying any room or rooms in any lodging house or hotel shall register or cause himself to be registered where registration is required by such lodging house or hotel. Any person registering or causing himself to be registered at any lodging house or hotel, shall write, or cause to be written, in the register of such lodging house or hotel the correct address of the person registering, or causing himself to be registered. Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding two hundred dollars ($200.00). This section shall not apply to any peace officer of this State who shall privately give his true name to the clerk or proprietor of such hotel or lodging house.

North Dakota.

Sec. 23-09-20.1. Guest record. — A record shall be kept in each hotel or lodginghouse in which every individual patronizing such hotel or lodginghouse shall write his or her name and address and the number of members in his or her party who will occupy a room or rooms therein.

New Hampshire.

Sec. 353:3. Register, Open to Inspection. All hotel keepers and all persons keeping public lodging houses, tourist camps, or cabins shall keep a book or card system and cause each guest to sign therein his own legal name or name by which he is commonly known. Said book or card system shall at all times be open to the inspection of the sheriff or his deputies and to any police officer. The term "public lodging house" as here used shall mean a lodging house where more than 2 rooms are habitually let for less than a week at a time

for the accommodation of transients. Whoever violates any provision of this section shall be guilty of a misdemeanor.

New York.

Sec. 204. Register to be kept.

The owner, lessee, proprietor or manager of any hotel, motel, tourist cabins, camp, resort, tavern, inn, boarding or lodging house shall keep for a period of three years a register which shall show the name, residence, date of arrival and departure of his guests. Such records may be kept within the meaning of this section when reproduced on any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which actually reproduced the original record.

Vermont.

Sec. 3101. Registration records.

Each keeper of a hotel, inn, lodging house or roadside camp or cabin shall keep or cause to be kept a record in which shall be recorded the true name and residence of each person engaging or occupying a private room containing a bed or couch or opening into a room containing a bed or couch for any period of the day or night, in any part of the premises controlled by the owner, manager or lessee. Each keeper shall preserve such registration record for three years.

Washington.

Sec. 19.48.020. Record of guests — Hotels and trailer camps.

Every hotel and trailer camp shall keep a record of the arrival and departure of its guests in such a manner that the record will be a permanent one for at least one year from the date of departure: *Provided,* That this requirement shall not apply with respect to guests of tenants in mobile home parks, as defined in RCW 59.20.030.